
IN THE
United States Court of Appeals
FOR THE NINTH CIRCUIT

No. 20,746

ROBERT ALAN LAWRENCE,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

PETITION FOR REHEARING

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Comes now the appellant, by his attorney, and files this his Petition for Rehearing of Judgment entered by the Court on December 16, 1966, affirming the judgment of the court below.

Appellant reserves his argued position as to each of the points of appeal, but in this petition addresses himself solely to certain features of the decision wherein he believes the Court may be convinced its opinion is incorrect.

The Court erred in its failure to apply the rationale in *Gearey v. United States*, 2 Cir., 1966, F. 2d

Although the opinion correctly points out that appellant did not originally claim to be a conscientious objector it makes an incorrect mention of the salient fact in his case, namely, that his views crystallized after the so-called deadline (32 C.F.R. § 1625.2) and he therefore was deprived by the local board of the special appellate procedures. The local board refused to reopen his classification and thus he had no appeal at all.

The opinion states "When his religious ideas might have crystallized is a matter of doubt and pure speculation. He was denied nothing to which he was entitled."

That is incorrect.

A. With respect to the time of crystallization.

The Court, we respectfully urge, has overlooked the following in the record: (1) that he first mentioned to the local board that he was a conscientious objector after he was sent the Order to Report for Induction [Ex. 11, 34] and (2) his testimony was unequivocal and undisputed in any manner (Rep. Tr. 16).

These two facts made his case an on-all-fours equivalent of Gearey's.

B. With respect to the denial of something "to which he was entitled."

Gearey holds that it is the intent of Congress that registrants professing conscientious objection be given the Special Appellate Procedure and that this intent is not to be thwarted by a local board turning down a late claim in such a way that no appeal is possible.

Another late decision points up this denial of due process, *U. S. A. v. Burlich*, S.D.N.Y., 1966, 257 F. Supp. 906. The court in *Burlich* summarized that "the registrant and the local board were not on the same wave length" [909] and that the court was going to decide the following question in *Burlich's* favor (as a denial of due process). . . "the Board's refusal to reopen his classification with the consequent foreclosure of an appeal from the denial of the requested classification amounted to a deprivation of due process." [909].

Wherefore, upon the foregoing ground, and for other reasons, appearing in appellant's Brief, it is respectfully urged that a rehearing be granted in this matter, and that the mandate of this Court be stayed pending the disposition of this petition.

Counsel represents and certifies: In counsel's judgment this Petition is well founded and is not interposed for delay.

Respectfully,

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January 11, 1967

